

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

JAMES HARVEY YORK,

Plaintiff,

v.

CIVIL ACTION NO. 3:20-0739

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL SECURITY,¹

Defendant.

MEMORANDUM OPINION AND ORDER

This action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted Findings of Fact and recommended that the Court grant the Plaintiff's request for remand (ECF No. 17); deny the Defendant's request to affirm the decision of the Commissioner (ECF No. 18); reverse the final decision of the Commissioner, and remand this matter back to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further administrative proceedings in order to determine the impact of Claimant's cane use on his residual functional capacity prior to his date last injured. No objections to the Magistrate Judge's findings and recommendation have been filed.

Accordingly, the Court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and, consistent with the findings and recommendation, **GRANTS** the

¹Kilolo Kijakazi is now the Acting Commissioner of Social Security and is automatically substituted as a party pursuant to Fed. R. Civ. P. 25(d). *See also* 42 U.S.C. § 405(g) (stating that action survives regardless of any change in the person occupying the office of the Commissioner of Social Security).

Plaintiff's request for remand (ECF No. 17); **DENIES** the Defendant's request to affirm the decision of the Commissioner (ECF No. 18); **REVERSES** the final decision of the Commissioner, and **REMANDS** this matter back to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further administrative proceedings in order to determine the impact of Claimant's cane use on his residual functional capacity prior to his date last injured.

The Court **DIRECTS** the Clerk to forward copies of this written opinion and order to all counsel of record, and any unrepresented parties.

ENTER: August 13, 2021



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE